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SUMMARY RECORD OF THE 1791st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 22 October 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Mr. BHAGWATI
(Vice-Chairperson)

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic report of the Republic of Korea

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic report of the Republic of Korea (CCPR/C/114/Add.1)

1. At the invitation of the Chairperson, Mr. Man-Soon Chang, Mr. Jong Hoon Kim, Mr. Yun-Sung Hwang, Mr. Kang-Il Huh, Mr. Sung-Wook Lee and Mr. Jae-Hoon Lim (Republic of Korea) took places at the Committee table.

2. Mr. Man-Soon CHANG (Republic of Korea), introducing his country's second periodic report (CCPR/C/114/Add.1), said that it dealt mainly with developments since the submission of the initial report (CCPR/C/68/Add.1) and covered the period from July 1991 to July 1996. Since the submission of the second report, further progress had been made with regard to civil and political rights. A new Government, the "Government of the people", had been sworn in in February 1998. The President, Mr. Dae-Jung Kim, was well known for his devotion to, and advocacy of, human rights and democracy. His inauguration had marked the first transfer of power by popular vote from the ruling party to the opposition since the founding of the Republic 50 years before and had made human rights a priority item on the national agenda. Guided by the principle of parallel development of democracy and the market economy, the Government had taken steps to bolster human rights.

3. In preparing the second periodic report, due attention had been paid to the questions raised during the consideration of the initial report and to the Committee's comments thereon (CCPR/C/79/Add.6). One of the main concerns expressed by the Committee related to the continued operation of the National Security Law (NSL). Given the security situation of the Republic of Korea as a divided nation, it could not simply do away with that Law. In the light of the Committee's views on the compatibility of some of its provisions with freedom of expression, however, and to prevent the Law from being exploited as a pretext for human rights abuses, his Government intended to amend it in a forward-looking manner. As a transitional measure, it had issued three directives in 1998 and 1999 which forbade law enforcement officials from interpreting the NSL in a broad manner. The number of NSL violators had decreased in 1998 by 12.3 per cent as compared with the previous year, and the number of those arrested had also dropped, by 27.5 per cent.

4. The "ideology conversion oath", which had been implemented for more than 60 years, had been abolished in June 1998 and replaced by the "law-abidance oath", which did not force prisoners to forfeit or change their political beliefs or opinions but requested of them an oath that they would comply with the law and not commit any further offences. The new oath was not a prerequisite for release but was to be used as a reference. In a special amnesty of 15 August 1999, 49 NSL offenders had been released, even though they had refused to sign the oath.

5. The Committee had also expressed concern at the use of excessive force by the police and the extent of the investigatory powers of the National Security Planning Agency. The report showed that the Republic of Korea had made strenuous efforts to prevent acts of torture or inhuman treatment by the

police. The Penal Procedure Code had been revised in December 1995 and now required the prosecutor to inspect more than once a month the detention facilities of police stations and investigating bureaux. If the prosecutor decided that an act of torture or inhuman treatment had taken place, he could order the instant release of arrested or detained suspects or transfer the case to the prosecutor's office.

6. The Republic of Korea had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1995. Its initial report under the Convention had been submitted in February 1996 and had been considered by the Committee in November 1997. Since President Kim's inauguration, his Government had been attempting to stamp out harsh treatment in the investigative process, including the extraction of confessions, by developing scientific investigation facilities and techniques such as the genetic information bank established by the Supreme Prosecutor's Office.

7. During the revision, in January 1994, of the National Security Planning Agency Act, a provision had been introduced to indicate that its agents must neither arrest nor detain individuals through abuse of authority or negligence of the procedure prescribed by law. Violations of that provision were punishable by up to seven years' imprisonment. The Agency had been reborn under the current Government as the National Intelligence Service and was now subject to oversight by one of the 16 standing committees of the National Assembly.

8. Protection of the human rights of convicted and unconvicted prisoners was also an important issue raised during the consideration of the initial report. In January 1995, the Government had revised the Penal Administration Act, improving and updating a number of provisions. For example, provisions on punishment of prisoners for violations of regulations had been modified to emphasize humanitarian treatment and the educational goals of the penal regime. All the new measures were intended to protect the human rights of prisoners and help them adapt to society more easily.

9. Since July 1999, and in accordance with the principle of presumption of innocence, unconvicted prisoners had been allowed to wear civilian clothes during trials. A "meeting house for married couples" had been in operation on a trial basis since May 1999. Temporary leave and sleep-out policies were also being implemented for prisoners of good conduct. His Government had freed the remaining 17 long-term convicted prisoners in February 1999. They were all agents of the Democratic People's Republic of Korea convicted of crimes such as murder, destruction of property and espionage. They had been released on a purely humanitarian basis, even though they had refused to sign an oath to abide by the laws of the Republic of Korea.

10. Turning to the right to peaceful assembly, he said his Government had attempted to provide guidance for the peaceful settlement of disputes between workers and management, even in the case of illegal labour strikes, as long as they involved no physical violation or destruction. It was true that many workers had undergone much hardship during the restructuring following the economic crisis of 1998. Despite the Government's efforts, workers experiencing economic hardship had become violent, beating non-unionists and corporate officials with steel pipes and damaging factory facilities. The

Government had had no choice but to enforce the law in respect of workers engaged in illegal acts of violence. In doing so, however, it had exercised prudence and arrested only active participants and leaders. With the adoption in 1999 of the Act relating to the Establishment and Management of Teachers' Unions, the freedom of association of teachers was now assured.

11. The report described a number of measures taken by his Government to realize the principles of equality, measures which included enactment of the Basic Employment Policy Act, the Senior Citizens Employment Promotion Act and the Handicapped Employment Protection Act, and also the revision of the Special Education Promotion Act. Legal aid programmes were being carried out to protect the rights of citizens who were unable to sue for damages owing to unfamiliarity with the law or lack of funds to cover the cost of proceedings. Since 1 June 1996, legal aid, which had been limited to civil offences, had been extended in criminal cases to farmers, fishermen, workers in financial need, small business owners and others, provided that certain conditions were met.

12. In December 1998, the Republic of Korea had ratified the ILO Discrimination (Employment and Occupation) Convention (No. 111), thereby reflecting its strong commitment to the elimination of any discrimination against foreign workers. It had also amended the Foreigners (Land Acquisition) Act, in May 1998, to abolish discriminatory elements of the Act which had limited the ability of foreigners to acquire land in the Republic of Korea.

13. Turning to the Government's efforts to ensure equal rights for men and women, he said the Women's Development Act had been approved in 1995 to consolidate a legal basis for adequate institutional and financial measures in support of women's participation and gender equality at all levels of society. The Government had adopted targets for the participation of women in public office, facilitating the recruitment of a prescribed number of women into the public sector each year. The targets had been due to rise from 10 per cent in 1996 to 20 per cent in 1999.

14. Recognizing that domestic violence constituted a serious crime, the Government had approved the Prevention of Domestic Violence and Victim Protection Act in 1997. The Act held State and local autonomous bodies responsible for creating legal and institutional mechanisms to prevent domestic violence and protect its victims. The Gender Discrimination Prevention and Relief Act had been adopted in January 1999. It was designed to prevent discrimination in every sector of society but also guaranteed relief measures if a case of gender discrimination occurred.

15. The Republic of Korea had been faced with difficulties in advancing the status of women owing to the economic crisis across Asia. Male and female workers alike had suffered the impact of the economic downturn, further aggravated by the poverty of women and coinciding with an increase in family disputes, domestic violence and divorce rates. To address those problems, his Government had been providing free vocational training and livelihood assistance for unemployed women who were heads of households. It was also implementing projects to create jobs and awarding promotional grants to businesses which rehired female employees who had been laid off. January 1999

had seen the passage of the Women's Enterprise Assistance Act which promoted the establishment of businesses by women and guaranteed equitable conditions for such companies. It accorded priority to enterprises headed by women providing supplies to the Government and easy access to credit and information.

16. On 13 December 1997, the Government had amended the Nationality Act to do away with gender discrimination regarding the acquisition of nationality by birth. Under the old Act, a person could obtain Korean nationality only if his or her father had been a Korean national at the time of his or her birth, but that would now be possible also if the mother was a Korean national.

17. Concern had been expressed by the Committee during the consideration of the initial report about the high number of offences punishable by death. In 1990, his Government had revised the Aggravated Punishment for Specified Crimes Act and the Aggravated Punishment for Specified Economic Crimes Act so as to remove the death penalty from 15 provisions, including those relating to crimes of bribery, evasion of customs duty, etc. It had also revised the Criminal Code in December 1995, deleting the death penalty from provisions relating, inter alia, to inundation of residential structures leading to death or injury, obstruction of public traffic causing death or injury, obstruction of the use of public drinking water causing death or injury and death resulting from robbery. The Government would continue to endeavour to narrow the scope of crimes subject to capital punishment and would review the possibility of abolishing the death penalty in the long run.

18. The Human Rights Bill, which was to establish the national human rights commission, had been finalized by the Government in March 1999 and was now being debated by the National Assembly. The work of the national commission would strengthen the mechanisms for human rights protection and enhance public awareness of human rights.

19. At the time of the Covenant's ratification, the Republic of Korea had expressed reservations concerning article 14, paragraphs 5 and 7, article 22 and article 23, paragraph 4. Reservations to article 23, paragraph 4, had been withdrawn on 15 March 1991 and those to article 14, paragraph 7, on 21 January 1993. Great efforts had been made to raise public awareness of the Covenant by distributing the Korean translation of major international human rights treaties, by educating officials engaged in human rights-related work, and by holding seminars and workshops on human rights. His Government planned to hold a subregional workshop on human rights education in Seoul from 1 to 4 December 1999 in collaboration with the Office of the High Commissioner for Human Rights. The workshop would provide a good opportunity to explore practical ways of promoting human rights education.

20. Admittedly, there was room for improvement in his country's judicial system. The Government hoped that the suggestions and contributions to be provided by the Committee would help to expand human rights awareness. Since joining the United Nations in 1991, the Republic of Korea had participated actively in the promotion of human rights, and the report represented a continuation of the trend that had seen the country establish itself as a responsible member of the international community. He hoped that the report,

in conjunction with the additional information he had just provided, would assist the Committee in understanding the implementation of the Covenant in his country.

21. The CHAIRPERSON thanked the delegation for its introductory statement and drew attention to the list of issues to be taken up in connection with the consideration of the second periodic report, which read:

"Status of Covenant

1. Is it intended to establish an independent mechanism for monitoring human rights violations and for addressing complaints?

Discrimination on grounds of sex (arts. 3 and 26)

2. What measures has the State party adopted to protect women against domestic violence? What remedies are available to a woman who is subjected to domestic violence?

3. What measures have been taken to promote equality between men and women? What measures have been adopted to remedy the discriminatory situation suffered by women within the electoral system and their participation in political parties and in public service (see para. 64 of the report)?

4. Do women have access to means of family planning and are these means available to all women?

Right to hold opinions, freedom of expression (art. 19)

5. Given the Committee's concerns regarding the compatibility of the National Security Law with the Covenant, has the State party reviewed past convictions under this Law so as to ensure release of persons convicted for mere expression of their views? Is release of such persons conditional on signing a law-abiding oath? Please give details of the number of people convicted of offences under this Law since submission of the last report. What has been done by the State party to make the National Security Law compatible with the Covenant?

6. In regard to paragraph 199 of the report, please explain the specific grounds for censorship of films and video works by the Performance Moral Committee.

Freedom from torture, liberty of person and prohibition of arbitrary arrest and detention, administration of justice (arts. 7, 9 and 14)

7. What procedures exist for independent monitoring of the police and members of the National Intelligence Agency and for investigating complaints of torture and other abuses of power by these bodies? Please give details of investigations carried out and their results.

8. Is there an independent mechanism for monitoring prison conditions and for investigating complaints by prisoners and detainees? Please give details.

9. What has been done to investigate allegations of gross human rights violations during the period of military government that was in power until the late 1980s and to prosecute persons responsible for such violations?

10. In light of paragraphs 106 to 110 of the report, please explain the new conditions in the Law of 8 May 1991, as amended, concerning 'voluntary appearance', as well as the provisions of the Code of Criminal Procedure of 1 January 1997 regarding the issuance of arrest warrants and the length of pretrial detention. Are all persons under arrest afforded access to legal assistance?

11. Please explain use made of the Security Surveillance Law to monitor conduct of some released prisoners.

Right to privacy (art. 17)

12. Please explain the law, practice and judicial control of eavesdropping on private conversations, particularly of telephone conversations, by State authorities.

Freedom of assembly and freedom of association (arts. 21 and 22)

13. Please explain reasons for arrest of trade union leaders who organized strikes protesting government policy and comment on compatibility of these arrests with articles 21 and 22 of the Covenant. Are any trade union leaders still being detained?

14. What restrictions exist on the right to form or to join trade unions and the right to strike under the Trade Union Relations Adjustment Act and any other laws?

15. In relation to paragraphs 213-214 of the report, is the final decision whether to allow assemblies and demonstrations in the hands of the police? Is it possible to challenge a decision prohibiting an assembly or a demonstration before the courts?

Discrimination (art. 26)

16. What legislation exists to protect persons against discrimination in the public and private sectors?

17. What measures has the State party taken to protect migrant workers and other aliens from harassment and ill-treatment by the police and immigration offi ials? Does legislation exist to guarantee equality in conditions of employment between migrant workers and Korean residents?

Optional Protocol

18. What action has the State party taken following adoption of the Committee's Views in the following communications: 518/1992 (Sohn case), 574/1994 (Kim case) and 628/1995 (Park case)?

Dissemination of information about the Covenant (art. 2)

19. Please indicate the steps taken to disseminate information on the submission of the report and its consideration by the Committee, in particular, on the Committee's concluding observations. Furthermore, please provide information on education and training on the Covenant and its Optional Protocol provided to government officials, schoolteachers, judges, lawyers and police officials."

22. Mr. Jong Hoon KIM (Republic of Korea) said the subject of disabled persons would be taken up later, but he wished to confess that his delegation was linguistically handicapped, Korean not being an official language of the United Nations. The delegation was further handicapped by the absence of a member of the governmental commission for women's affairs.

23. Replying to question 1 of the list of issues, he said a Human Rights Bill to establish an independent mechanism for monitoring human rights had been submitted to the National Assembly in April 1999. The National Assembly had had a public hearing and the Bill was now under discussion in its Judiciary Committee. In preparing the text, the Government had closely followed the guidelines in the United Nations handbook on national human rights institutions. It had paid close attention to the legislative examples and practical experience of several other countries where human rights commissions and ombudsmen were already in place. The Office of the High Commissioner for Human Rights had also provided information and advice.

24. During the public hearing, a wide range of views had been expressed on the Bill and a heated debate had ensued. The Government welcomed that variety of opinions because it reflected the pluralism of a democratic society. The legal status of the human rights commission envisaged under the Act was to be that of a corporate body, since that was seen as the best way of ensuring its independence. It would be made up of nine commissioners appointed by the President, three of them to be recommended by the Speaker of the National Assembly and three by the Chief Justice. Their tenure and status were guaranteed by the Act. The chief commissioner would be able to appoint and discharge staff members autonomously, without government intervention. The status of staff would be guaranteed in a manner equivalent to that of their counterparts in government service. The budget would be furnished by the Government, but government supervision of the commission's operations had been all but excluded by the importance attached to its independence. The Government's efforts to secure the commission's independence and prevent any official interference, particularly by the Minister of Justice, were deemed to be fully in compliance with the recommendations in the United Nations handbook.

25. The Bill defined human rights as the freedoms and rights of a human being which were guaranteed by the Constitution and laws or recognized by

international human rights treaties ratified by the Republic or by international customary law. The commission's main functions would be to provide education on and publicize human rights, to undertake research and make recommendations on laws, systems, policies and practices in the field of human rights, and to investigate and remedy human rights violations. Its jurisdiction covered investigation of unlawful arrest, detention or torture by law enforcement or prison officers and could be extended, by an umbrella clause, to the investigation of any coercive acts or the obstruction of an individual's exercise of personal rights. The Bill contained a penalty clause providing that hindering the exercise of the functions of a commissioner or staff member would constitute the crime of obstruction of official duty as prescribed in the Criminal Code. Persons who refused to appear or submit materials, including documents, provided false documentation or materials or obstructed an on-site visit by a commissioner would be liable to a fine of approximately US$ 10,000.

26. Mr. Kang-Il HUH, responding to questions 2 to 4 on discrimination on grounds of sex, said that in an attempt to eliminate domestic violence and protect victims, the Government had enacted two laws in December 1997. The Special Act for the Punishment of Domestic Violence stipulated that employees of educational, medical, welfare and child-care facilities had a responsibility to report domestic violence to investigating agencies. Police officers who received reports of ongoing domestic violence should immediately go to the scene and take the necessary action. Such action included the restraining of acts of violence, the investigation of the crime and the delivery of the victim, if he or she agreed, to a domestic violence counselling centre or protection facility. Other actions included the transfer of a victim who needed immediate medical treatment to a medical facility and informing victims of their right to file a motion for temporary measures, such as separation or prohibition of encroachment by the offender within 100 metres of the victim's residence or workplace.

27. The second law adopted in December 1997, the Prevention of Domestic Violence and Victim Protection Act, held State and local autonomous bodies responsible for creating legal and institutional mechanisms to prevent domestic violence and protect its victims. It required them to establish and operate counselling centres and custodial care facilities for victims of domestic violence and to support comparable facilities operated under private auspices. As of 31 August 1999, 65 counselling centres and 14 protection facilities had been available for victims of domestic violence. A budget of approximately US$ 470,000 had been allocated to support such centres and facilities, and the Government planned to increase that support in the future. A 24-hour hot line had been established nationwide and training sessions had been conducted on an extensive scale for law enforcement officers to ensure effective implementation of the Act.

28. Mr. Jong Hoon KIM (Republic of Korea) drew the Committee's attention to a booklet issued by the Presidential Commission on Women's Affairs which listed the addresses and telephone numbers of all protection facilities and reporting centres around the country. The booklet had been distributed nationwide.

29. Mr. Kang-Il HUH (Republic of Korea), replying to question 3, said his Government was giving priority to the promotion of women's rights. The Presidential Commission on Women's Affairs had the task of monitoring the implementation of women's programmes. In addition, a "master plan" had been launched in 1998 to promote the development and economic empowerment of women. With a view to improving the status of women and their participation in society, a Women's Development Fund had been established in 1997, which aimed to raise US$ 70 million by 2002. A Gender Discrimination Prevention and Relief Act had been approved in January 1999, making the Presidential Commission responsible for investigating allegations of gender discrimination. It would determine whether or not a particular case constituted discrimination, and would mediate in gender-related disputes, as well as recommending measures to rectify inequalities. Any unjustified interference in a gender discrimination investigation was punishable by a fine or by imprisonment for up to two years; persons who refused to give evidence in such cases could be charged with negligence and fined.

30. New policies were likewise being developed to expand women's participation in politics. In the local elections of 1998, 34 candidates out of a total of 108 had been female. A policy aimed at increasing the representation of women in public service had been introduced in 1996, and the target was expected to rise to 20 per cent by the end of 1999 and 30 per cent by 2002. In April 1999, a strategy specifically designed to promote the status of women public servants by the year 2000 had been launched.

31. Mr. Jong Hoon KIM (Republic of Korea), on the question of target percentages for the participation of women in public service, said there had in fact been complaints from male candidates that to set such a high female quota constituted a kind of reverse discrimination which militated unfairly against them. The Government was nevertheless convinced of the need to take affirmative action.

32. Another initiative had been the Women's Enterprise Assistance Act of January 1999, which gave businesses run by women priority in government procurement and allowed them easier access to bank loans.

33. Mr. Kang-Il HUH (Republic of Korea), in response to question 4, said his Government encouraged the voluntary practice of family planning by individual families, although those living on low incomes and in rural areas received financial subsidies. In 1999, the Government had allocated US$ 456,000 to cover 50 per cent of the costs of contraceptive provision. Where necessary, local autonomous bodies would meet the cost of distributing contraceptive devices out of their own budgets.

34. Mr. Jong Hoon KIM (Republic of Korea) pointed out that in 1960 the rate of population increase had been as high as 3.01 per cent. Thanks to an intensive family planning campaign initiated by the Government, it had fallen to 1.7 per cent by 1975 and to 1.57 per cent by 1980. The practice of withdrawing tax benefits from families with more than three children had now been abolished, but despite that the rate of increase was now down to 0.95 per cent.

35. Mr. Yun-Sung HWANG (Republic of Korea), replying to question 5, said that when Korea had been liberated in August 1945, the country had been divided between the Soviet forces in the north and the United States forces in the south. On 1 December 1948, the National Security Law had been enacted in an effort to counter social disorder and to protect South Korea from the threat of communism. In 1950, the outbreak of the Korean war, which had claimed over 3 million lives, had demonstrated that fear of that threat had been well founded. Although South and North Korea had since signed a peace treaty, there had been countless small-scale conflicts along the demarcation line over the past five decades, including an armed infiltration in 1997. That history explained why the Korean people accepted the need for the National Security Law.

36. Nevertheless, human rights groups had had occasion to challenge the unduly broad way in which the Law was being enforced. Accordingly, the President had taken action to prevent any possible infringement of human rights by announcing a series of amnesties between March 1998 and August 1999, under which 255 persons convicted for violating the Law had been released and 32 had had their sentences commuted. The law-abidance oath that in the past had had to be signed by convicted persons as a condition for their release was simply a statement that whatever opinions they might hold, their actions would be compatible with the law. Following the amnesty, however, the signing of the oath was no longer a prerequisite for release.

37. Prudence was now the guiding principle in applying the Law, and as a result the number of charges brought under it had decreased by 27.5 per cent as compared to 1998, and the number of prosecutions by 53.6 per cent. In 1999, up to 20 October, a total of 117 persons had been charged under the Law, of whom 25 had been convicted and 92 were still undergoing trial proceedings. It should be noted that those figures were for the entire period since the Law had been enacted, and not merely the period since the ratification of the Covenant.

38. Some of the provisions of the Law, notably article 7, which had been criticized by human rights groups as being too broad and lacking specificity, were currently being revised in a process which included public hearings. The prudent application of the law under the current regime, coupled with the establishment of the national human rights commission, was clear evidence that the Government was dedicated to the preservation of civil liberties.

39. Mr. Jong Hoon KIM (Republic of Korea), in reply to question 6, said that the Performance Moral Committee no longer existed. In October 1996, the Constitutional Court had decided that examination of films prior to public showing amounted to censorship and was therefore unconstitutional. The Performance Act had been amended in February 1997 and a new body set up with the task of simply assigning films appropriate ratings. An amendment to the Motion Picture Act was envisaged, allowing even unrated films to be shown at certain designated cinemas.

40. Mr. Sung-Wook LEE (Republic of Korea), in response to questions 7 to 11, said that complaints of illegal conduct by police or members of the National Intelligence Agency could be freely made, and would be followed up by a standard investigation process. If a complaint of abuse of power by

government officials or of illegal arrest or torture by police or prison officers was rejected by the public prosecutor, the complainant could appeal to a higher court, and eventually to the Constitutional Court. The Human Rights Bill now under consideration provided for all human rights violations by the authorities to be dealt with by a national human rights commission.

41. In response to question 8, he said that a number of steps had been taken to improve prison conditions. Rooms for interviews with lawyers had now been installed in all public prosecutors' offices, and prisoners with records of good behaviour were permitted the use of a telephone. Longer meetings with family members had been granted, and inmates were allowed to subscribe to newspapers and watch television. The Government planned to introduce correctional institutions operated by private persons, and to restrict the wearing of handcuffs and prison uniforms at court hearings.

42. Regular inspections, as well as visits by judges and public prosecutors, were made to check on prison conditions. Prisoners were entitled to present a sealed petition to the Minister of Justice, and to have a written answer from the Minister delivered to them in person.

43. Referring to question 9, he said that those who had resorted to violence in quelling the democracy movement of 18 May 1980 had been punished. Those who had taken part in the suppression of the movement had been charged with rebellion and bribe-taking and indicted. However, they had served only two years of their sentence and had then been released in the interests of national harmony.

44. On question 10, he said that, according to article 12 of the Constitution, a warrant issued by a judge must be presented in cases of arrest, detention, seizure or search. However, where a suspect was apprehended in flagrante delicto or was suspected of committing a crime punishable by imprisonment for three years or more, the authorities could request an ex post facto warrant. Any person who was arrested or detained had the right to prompt assistance by counsel, and the right to request the court to review the legality of his arrest or detention.

45. As to the length of pre-trial detention, a suspect must be released if he was not brought before a judge within 10 days, unless the detention period was extended at the request of the public prosecutor. While a 10-day extension could be granted, the grounds must be stated in the application. An arrested suspect later released by a public prosecutor could not be rearrested for the same crime, unless there was supervening evidence. Defence counsel or other persons acting on behalf of a suspect detained or arrested with a warrant could petition the competent court to examine the legality of the arrest or detention. The court must promptly examine the suspect and either dismiss the application or order the release of the suspect, who could also be released on bail. The public prosecutor and defence counsel were entitled to state their case in court on the day of the examination. The right to appear before a judicial officer was, therefore, fully protected under the law.

46. As to the conditions of "voluntary appearance" referred to in paragraphs 108 and 109 of the report, a police officer could stop and question, on the basis of reasonable doubt, anyone suspected of committing a

crime, or of knowledge that a crime had been or was about to be committed. The suspect could be invited to accompany the officer to a police station for further questioning, but could refuse. If he was taken to the police station by force, the arresting officer could be charged with illegal arrest under the Criminal Code. However, if the suspect went voluntarily, he could be kept for only six hours.

47. Turning to question 11, he said the purpose of the Security Surveillance Law was to keep persons who had committed specific offences under close observation so as to avert any risk of recidivism and help reintegrate them into society, thus maintaining national security and social order. A person who had served part or all of a prison sentence of up to three years for offences subject to security surveillance, or concurrent offences, was subject to a security surveillance order, which could be obtained upon a public prosecutor's application to the Minister of Justice. The application was reviewed by the Security Surveillance Board, chaired by the Vice-Minister of Justice, which issued an opinion; on that basis a decision was rendered by the Minister of Justice. The person under surveillance was required to report to his local police station. A public prosecutor or Judicial Police Officer could render all protection deemed necessary for the person's improvement and self-defence, as well as any assistance required for his social rehabilitation. Similarly, the person concerned could file an administrative appeal with the court for repeal of the order.

48. Mr. KRETZMER commended the delegation's detailed oral replies, but recalled that, following consideration of the initial report of the Republic of Korea, the Committee had noted, as its main concern, the continued operation of the National Security Law. He was equally dissatisfied after the delegation's defence of it at the current session. It was the Committee's duty to determine whether the country's application of its laws was consistent with the Covenant, and the delegation's replies had made it abundantly clear that it was not, as evidenced by two communications against the Republic of Korea. It was not for the Committee to contest any country's right to guard its national security, as explicitly stated in its concluding observations on the country's initial report in 1992, and the Covenant took that into account, particularly in connection with article 19 governing freedom of expression. Limitations were indeed provided for, but they must meet certain conditions and must be shown to be necessary. Then, as now, the Committee had not been convinced that the restrictions applied by the Republic of Korea had been essential for its national security.

49. The designation of North Korea as "an anti-State organization" spoke volumes. It was unacceptable that the mere expression of views that might coincide with those held by North Korea should be interpreted as endangering national security. Notwithstanding the new President's directive for a narrower interpretation of the National Security Law, it was still in force, and until it was amended to provide that such restrictions could be imposed only if genuinely and strictly necessary, the Republic of Korea would continue to be in breach of its obligations under article 19 of the Covenant. Not only were certain political parties in Korea clamouring for its amendment, but the Committee had unequivocally stated that the Law as applied was incompatible with that article.

50. Another issue concerned pre-trial procedures and torture, which were linked. The delegation had expatiated on the mechanisms adopted to prevent torture, one such being the monthly visit by the public prosecutor to detention facilities. If, however, as stated in the report, a person could be held for 30 days and, under the National Security Law, for 50 days, the public prosecutor's monthly visit could hardly be effective. It had been stated in paragraph 118 of the report, and corroborated by the delegation, that an arrested suspect could apply for a review of the legality of the arrest under the new Penal Procedure Code. Article 9, paragraph 3, of the Covenant, however, clearly prescribed that a detainee must be brought promptly before a judge or other judicial officer as the most effective means of protection against police or other pressure, placing the onus squarely on the State party. Since Korean law did not comply with that provision, a detainee could meanwhile be dissuaded from seeking a review. He asked why the burden of application was placed on the detainee, in flagrant breach of article 9. Further, while a suspect could not be arrested without a warrant, one could presumably be obtained in his absence, thus violating article 9, paragraph 3.

51. The delegation had said that a detainee had the immediate right to be assisted by counsel. What did the term actually connote? Did it include the right for counsel to be immediately informed? According to one Korean NGO, it was difficult at times for counsel to gain access to detainees. He requested more information on that subject. Also, a suspect could be detained for 10 days in police custody, followed by 10 days' detention by the public prosecutor, who could seek an extension of a further 10 days. If indicted, the accused was kept in detention until the trial. Who made the decision and on what grounds?

52. Mr. ANDO said he had been present at the consideration of the initial report of the Republic of Korea, at the time of the cold war, when South-North tensions had been acute and the trauma of the Korean war had still been very much in the minds of its citizens. But times had surely changed dramatically, and the new President was applying what he had dubbed a "sunshine approach" to North Korea. He hoped it would result in the unification of the two Koreas.

53. That having been said, he had some areas of concern. His first question related to the place of the Covenant in the domestic legal system, which had already been raised during consideration of the initial report. From the current report (paras. 9 and 10) it was clear that the Covenant took precedence. However, the report was so cautiously worded as to be ambiguous, as instanced by the statement that article 6 of the Constitution provided that international treaties promulgated under the Constitution and the generally recognized rules of international law had the same effect as the domestic laws. But what if subsequent domestic legislation contravened one of the provisions of the Covenant once it had been ratified? In the United States, international treaties had the same rank as federal legislation, but in the event of conflict the treaty obligation prevailed. He inquired whether the same obtained in the Republic of Korea.

54. He would like to know the situation on gender equality in the Family Law, and the outcome of the work of the Special Committee for Revision of the Civil Code set up by the Government to review that Law. He shared Mr. Kretzmer's concerns about the application of the controversial National

Security Law (NSL) and its inhibitive effect on exercise of the right to freedom of expression. There was, of course, the espionage clause, but that did not stop the authorities from treating relevant cases under ordinary criminal law or under a law specific to the interests it wished to promote. Since it was clear that the Korean people wished to see the NSL abolished, he wondered whether, with the change in the international atmosphere surrounding Korea, there was any process of consultation with the authorities. The delegation had explained that the Security Surveillance Law was also covered by the NSL. It could perhaps shed some light on the legal effects and so-called reference purposes of the law-abidance oath prisoners were requested to take upon their release.

55. Mr. Bhagwati (Vice-Chairperson) took the Chair.

56. Mr. KLEIN, referring to questions 7-11, expressed deep concern about the NSL. He could see that the experience of the Republic of Korea had been difficult, traumatized as it had been by its history of war, occupation and division. Coming himself from a country divided for 45 years, he understood all too well the situation of a "front-State" situated along a border where antagonistic ideologies and values confronted each other, and which might prompt it to develop attitudes held untenable by others. Nonetheless, the criticism rightly levelled at it had stemmed not from an underestimation of the continuing dangers to which it was exposed, but from the actions of a democratic republic that claimed to ensure the human worth and dignity of all people (in the terms of its Constitution) in its determination to avert danger. That very question had been at the heart of the Committee's deliberations on the country's initial report, and must be at the heart of the current discussion.

57. The delegation had pointed to new developments, but although the period covered ended in 1996, the new directives remained just that. Based on the rule of law, a State's directives could not alter the NSL; judges could not be bound by them, but by the Law in its current form. It was no secret how Korean courts had been applying that Law, and many things could occur between the initiation of an amendment and parliament's enactment. Meanwhile, the Law remained in force and caused grave concern, containing such terms as acts of an anti-State organization, State secrecy and infiltration. As recently as 1997, a record 674 persons had been convicted under the Law; while the number had declined, it remained large. Films, books, oral and written protests and even paintings were censored under that Law, which could be easily used, as indeed it had by the Republic of Korea, which saw itself as a "front-State", to interpret any protest against State political action as abetting the enemy and to immunize its own policy against criticism. Thus, in legal terms, the crux of the matter was that, in the formulation of punishable acts and in the application of the Law, the principle of proportionality as a moderating element had been lost from sight. Accordingly, the Law must be abolished or at least carefully amended against the background of the Covenant as a whole. An important question was what should be done about persons convicted under that Law, in contravention of the Covenant.

58. He had three specific questions on that subject. First, what did the constitutional guarantee that national security restrictions on the freedoms and rights of citizens would not violate any aspect of those rights actually

entail in relation to the aforementioned cases? Second, what were the form and duration of the correctional education provided in prisons (para. 191 of the report) to persons convicted for attempting to overthrow the democratic system? Finally, he confessed himself baffled by the law-abidance oath that had replaced the "ideology-conversion oath". Surely everyone was expected to abide by the laws of a State? The oath also constituted discriminatory treatment, since it was not required of all citizens, nor even all prisoners. What were its precise implications and actual effects?

59. On the independence of the judiciary, he found questionable the system of reappointment of judges, as established in article 105 of the Constitution, which perforce affected their independence. He would like to know how many were not reappointed and why, and how they would earn their living. Were they barristers who could simply resume their practice? Or was their financial security dependent on their judgeship?

60. Mr. LALLAH said that while the catalogue of positive measures taken by the Government of the Republic of Korea since the consideration of the initial report was undoubtedly impressive, a number of problems remained. In the first place, the Constitution had not been reviewed and was still by no means clear-cut on the issue of practical guarantees of the enjoyment of basic rights. Second, the Government did not seem to be clear in its own mind about the place of the Covenant in the internal legal order. It had been brought to his attention that the Republic of Korea's report to another monitoring body suggested that special laws took precedence over obligations under international treaties. Associating himself with the remarks of previous speakers on the subject of the National Security Law (NSL), he remarked that there seemed to be a mindset in Korea that prevented an objective assessment of what a basic right really was. Article 7 of the Law unquestionably constituted a gross violation of article 19 of the Covenant. In reporting a decrease of around 25 per cent in the number of persons arrested under the Law in 1998, the delegation had omitted to explain that the number of such arrests had risen by over 300 per cent between 1993 and 1997. Clearly the NSL was still being applied with great severity. Associating himself with Mr. Klein's remarks about the so-called "law-abidance oath", he remarked that such an oath was valueless when there was no guarantee that the law itself did not criminalize the exercise of fundamental rights under the Covenant. In conclusion, he endorsed Mr. Klein's remarks concerning the security of tenure of judges.

61. Ms. EVATT said that, while associating herself with the remarks made by previous speakers, especially in relation to the NSL, she proposed to focus on questions 2, 3 and 4 of the list of issues. Endorsing comments about the proposed abolition of the family headship system, she noted the relative importance given to the birth of male children in Korean society and said that she had read with alarm of the intense interest shown by prospective parents in having advance knowledge of the sex of a foetus and the disproportionate numbers of abortions of girl babies. Since, moreover, abortion was illegal in Korea in most cases, the very high abortion rate surely contributed towards the country's relatively high rate of maternal mortality. In taking effective steps to improve the status of women in society, the authorities should not only relax the application of the abortion laws, but should also ensure that women had equal access to family planning services.

62. While welcoming the adoption of the Prevention of Domestic Violence and Victim Protection Act in 1997, she remarked that budget allocations for the implementation of the Act appeared to be rather low. Was it true that the period of effectiveness of protection orders in cases of domestic violence was limited to only two or three months, that rape was not included under the heading of domestic violence, and that rape victims were still under social pressure to marry the perpetrator? Other areas of concern were the difference between the marriageable ages for men and women and the compulsory waiting period of six months for women wishing to remarry.

63. In the field of employment, she understood that many Korean women working in small businesses did not benefit from labour standards or equal employment opportunities. The establishment of a Presidential Commission and the enactment of the Gender Discrimination Prevention and Relief Act were to be welcomed but further details were needed of the Commission's functions, powers and accessibility to women workers. Lastly, referring to the low level of women's participation in political life, she said that in that area, too, a comprehensive review of existing laws was clearly required.

64. Mr. WIERUSZEWSKI, referring to the question of torture, said that the report and information from other sources implied that efforts to eradicate the practice had not yet proved fully effective. In connection with the statement in paragraph 92 concerning compulsory inspections of detention facilities, he asked whether that meant that the prosecutor also had access to detention areas run by the national intelligence agency. With reference to paragraph 94, he welcomed the Supreme Court's decision of 28 September 1993 but asked for additional information about the kind of proof a victim of torture had to produce. According to information he had received, courts were reluctant to accept allegations of torture where there were no visible signs of ill-treatment.

65. Referring to the establishment of the Human Rights Infringement Report Centre referred to in paragraph 96, he asked for examples of complaints received by the Centre over the past two years, and any action taken in consequence. The numbers given in paragraph 98 for cases where investigating agents had been punished for violent or cruel treatment of suspects seemed disproportionately small considering that over 700 complaints of ill-treatment had been filed between 1996 and August 1998. It would appear that a climate of impunity still existed within the law enforcement services, especially bearing in mind that complainants included not only detainees under the National Security Law but also ordinary criminals.

66. Mr. YALDEN, welcoming the forthcoming establishment of a national human rights commission, asked for additional information about its functions, operation and budget. Would members be appointed for a substantial number of years? Would its decisions be in the nature of recommendations or would they have executive force? Would its jurisdiction extend to the military and the security forces? He also welcomed the steps being taken to improve the status of women, but thought that not enough information had been provided about results achieved so far. The setting-up of a Presidential Commission was an excellent step, but was there no independent body to look into the matter? Could not the proposed human rights commission also play a role, inter alia,

in connection with meeting women's employment targets? What results had been achieved by the Government's equal pay policy? Did an independent mechanism exist for dealing with complaints from prisoners? The delegation had mentioned the possibility of petitioning the Minister of Justice, but that was a governmental rather than an independent channel.

67. Mr. ZAKHIA asked who had the right to request a review of a law on grounds of unconstitutionality. He also requested more details about the proportion of women in university and civil service posts and in the professions. Why was women's participation in parliament minimal, despite the quotas introduced? Lastly, he wondered whether the protection of human rights in the Republic of Korea would not be enhanced if NGOs were given the right to bring matters before the courts.

68. Mr. SCHEININ, referring to one of the two Optional Protocol cases involving the Republic of Korea mentioned by an earlier speaker, recalled that in explaining the court decision against the complainant, the State party had said that Mr. Tae Hoon Park had been convicted not because the law precluded the application of the Covenant but as a matter of necessity. How could such a position be justified in a country where a state of emergency had not been declared? Clearly, the National Security Law enjoyed priority over the Covenant.

69. On the question of prenatal sex selection already raised, he said that forcing a woman to abort was a violation of article 7 of the Covenant. Did the Korean Government see article 7 as a positive obligation to take effective steps to eliminate such practices?

70. Turning to the question of the prevention of torture, he welcomed the action taken but noted that only a few of the numerous complaints filed resulted in an investigation and still fewer in the punishment of the perpetrators. The root cause of the problem was perhaps the fact that the Korean criminal system seemed to rely very heavily on confessions. It might be helpful if the rules of evidence were tightened in that respect, for example by extending the withdrawal of a confession by the defendant to other evidence, including confessions by accomplices, obtained through pre-trial interrogation.

71. In that connection, he referred to the second Optional Protocol case (Ajaz and Jamil) involving the Republic of Korea that had been considered by the Committee. Agreeing with previous speakers that the pre-trial detention period was excessively long, he suggested that a higher degree of compliance with article 9, paragraph 3, of the Covenant could be achieved by ensuring that judges saw the detainee at regular intervals and that he or she received frequent visits from a doctor and a lawyer. A stricter separation of detention premises for persons held by the police, the investigating authority and the court, respectively, would also help to eradicate torture. Did some trials take place inside the detention centre, or was that prohibited?

72. Lastly, referring to the delegation's encouraging remarks about the long-term possibility of abolishing the death penalty, he asked for an update of the situation with regard to death sentences and executions. Did the current situation effectively amount to a moratorium?

73. Ms. CHANET said that positive developments since the consideration of Korea's initial report included the prospective establishment of a national human rights commission and the withdrawal of some, if not all, of the Republic of Korea's reservations to articles of the Covenant. On the other hand, many points raised in connection with the initial report were still outstanding. No amendments had been introduced in the Constitution, although some of its provisions, such as for example paragraph 37 (2), were manifestly at variance with the Covenant. While welcoming the fact that the Government appeared to be aware of the problem, she emphasized that the National Security Law was inconsistent with not only article 19, but also article 9 of the Covenant.

74. Agreeing with previous speakers that the pre-trial detention period was too long, she asked what were the detainee's rights during that time. When could he first see his lawyer or a doctor? Could the lawyer be present at the interrogation? When were his rights, including the right to be asked to be brought before a judge, explained to him? In any event, should that right not be granted automatically? She invited the delegation to explain how Korea interpreted its obligations under article 9, paragraphs 3 and 4 of the Covenant. Additional information about the conditions governing the issue of arrest warrants by the judge would also be welcome.

75. In conclusion, associating herself with Mr. Klein's and Mr. Lallah's remarks concerning the reappointment of judges, she said it had been brought to her notice that a judge who had convicted five policemen had subsequently not been reappointed. She would be glad to receive further information about the Republic of Korea's compliance with article 14 of the Covenant in that connection.

The meeting rose at 1.05 p.m.